

In respondent's Application for Review and its supporting brief, respondent also argues claimant did not give timely notice of the injury. At the time of oral argument, respondent abandoned this argument.

Claimant asks that the Award be affirmed.

The two issues on appeal are, therefore: (1) Did claimant prove accidental injury arising out of and in the course of employment? and (2) What is the nature and extent of claimant's injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the evidence, the Appeals Board affirms the Award entered by the ALJ.

Findings of Fact

1. Claimant worked as a shelter manager for the Kansas Humane Society and in 1997 developed pain in both hands and wrists. Claimant's duties included oversight of the maintenance department as well as oversight of the day-to-day care of the shelter animals. The work required her to use her hands and arms to operate a power washer and squeegee to clean the animal runs and also to do carpentry and repair work. Claimant reported the problem to a supervisor in September and the supervisor referred her to Dr. Niederee for treatment. Claimant first saw Dr. Niederee on September 10, 1997, and claimant was ultimately referred to Dr. J. Mark Melhorn.
2. Claimant's last day of employment with respondent was October 30, 1997. Claimant has since obtained other employment and makes no claim here for work disability.
3. Dr. Melhorn first saw claimant October 30, 1997, for painful right and left hands. On November 6, 1997, Dr. Melhorn ordered injections for both wrists and EMG studies for both extremities. The EMG was positive for carpal tunnel syndrome on the right but not the left. Dr. Melhorn described the left as in the upper limits of normal. Dr. Melhorn's notes for examination done December 1 and again on December 22, 1997, state that claimant is having symptoms consistent with carpal tunnel on both the right and left. Dr. Melhorn suggested claimant have carpal tunnel surgery on the right but claimant declined.
4. Dr. Melhorn saw claimant March 20, 1998, after claimant had left work for respondent and had begun work for another employer. At that time he rated claimant's impairment. He assigned a 10.55 percent impairment rating for the right upper extremity but concluded there was no permanent impairment to the left upper extremity. Dr. Melhorn acknowledged that carpal tunnel syndrome can be diagnosed by clinical findings even in some cases where the EMG is negative.
5. At the request of claimant's counsel, Dr. Edward J. Prostic also examined claimant. Dr. Prostic saw claimant February 9, 1998. Dr. Prostic found clinical evidence of two separate problems, thoracic outlet syndrome and bilateral carpal tunnel syndrome. The clinical evidence of the thoracic outlet syndrome was symptoms from Adson maneuver and

by downward and backward traction. Carpal tunnel was manifested on the right by positive Phalen maneuver and poor two point sensory discrimination and on the left by positive Phalen. This evidence was in addition to the positive EMG on the right. Dr. Prostic also testified carpal tunnel syndrome can sometimes be diagnosed and even surgery done for carpal tunnel syndrome on the basis of clinical findings even where there is a negative EMG. Dr. Prostic rated claimant's impairment as 15 percent of the whole body.

6. The Board finds claimant's work-related injury included both the right and left upper extremities. For this conclusion, the Board relies in part on the testimony of claimant, specifically her testimony that the symptoms were in both extremities, and the opinion of Dr. Prostic. Dr. Melhorn has, in determining the claimant has no impairment in the left, focused on a paragraph found on page 19 of the *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition. Dr. Melhorn describes this as authorizing a 0 percent impairment when the symptoms from a repetitive trauma injury are reduced by alteration of the daily activities. But the example on page 19 indicates the 0 percent rating also assumes, in addition to reduced symptoms by alteration of daily activities, normal physical examination, absence of symptoms, and normal laboratory studies. Claimant continued to have bilateral symptoms and physical examination was not normal on either the left or the right as reflected in Dr. Prostic's clinical findings.

7. Based on Dr. Prostic's rating, the only whole body rating in the record, the Board concludes claimant has a 15 percent permanent partial impairment.

Conclusions of Law

1. Claimant's injury was not a scheduled injury and claimant is, therefore, entitled to a general body disability. K.S.A. 1996 Supp. 44-510e.

2. Claimant makes no claim for a work disability and her disability is, therefore, to be based on functional impairment based on the *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition. K.S.A. 1996 Supp. 44-510e.

3. Claimant has a 15 percent permanent partial general disability. K.S.A. 1996 Supp. 44-510e.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on October 21, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
D. Steven Marsh, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director